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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

Criminal No. 20-116

BRIAN JORDAN BARTELS,

Defendant.

- - -

Transcript of proceedings on January 27, 2021 United States  
District Court, Pittsburgh, Pennsylvania, before Judge  
Arthur J. Schwab.

APPEARANCES:

For the Government: U.S. Attorney's Office  
Shaun Sweeney, Esquire  
U.S. Courthouse  
700 Grant Street  
Pittsburgh, Pennsylvania 15219

For the Defendant: Joseph S. Otte Esquire  
429 Fourth Avenue  
Suite 1002  
Pittsburgh, PA 15219

Court Reporter: Marsia L. Balobek  
700 Grant Street  
Suite 5300  
Pittsburgh, Pennsylvania 15219

Proceedings recorded by mechanical stenography;  
transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 (Proceedings held by way of hybrid hearing; in-person  
3 and over Zoom videoconferencing)

4 THE COURT: Everyone, you may remain seated; and at  
5 least in the back row, you need to socially distance  
6 yourselves. Thank you. I appreciate if everyone would mute  
7 their devices, please. I'm getting some feedback.

8 Good morning. This is the time and place set for --  
9 I'm still getting feedback. In addition to muting yourself,  
10 turn your volume down on your device, please.

11 This is the time and place set for hybrid sentencing  
12 in criminal number 20-00116. All parties are appearing by  
13 videoconference except for the Court -- I'm physically in the  
14 courtroom along with the court reporter. Also with us in  
15 person are the defendant and defense counsel, at defendant's  
16 request, along with two guests. So again, everyone is  
17 appearing by Zoom except the Court, court reporter, defendant,  
18 defense counsel and two guests, who are all here in person.

19 For the government, who do we have on the  
20 videoconference, please?

21 MR. SWEENEY: Shaun Sweeney, assistant U.S. attorney  
22 here for the government, Your Honor.

23 THE COURT: Welcome. On behalf of the defendant,  
24 please?

25 MR. OTTE: May it please the Court, Joe Otte on

1       behalf of Mr. Bartels.

2               THE COURT: Welcome. And we have some people on the  
3       videoconference. We have two reporters, welcome, and one  
4       other person. Do you know who the other person is, defense  
5       counsel?

6               MR. OTTE: No, Your Honor.

7               THE DEPUTY CLERK: I believe she's also a reporter,  
8       Judge.

9               THE COURT: Well, I welcome all three reporters. And  
10      if you have any trouble hearing at any time, just call my  
11      chambers and we'll help you as much as we can so you can  
12      participate and hear what occurs.

13              These proceedings are being transcribed by our court  
14      reporter the same as if everyone was physically present in the  
15      courtroom. Before proceeding further, I want to make it clear  
16      on the record to everyone that recording, whether audio, video  
17      or both, photographing, broadcasting or otherwise  
18      electronically or digitally capturing the content of any civil  
19      or criminal court proceeding remains strictly prohibited; in  
20      other words, illegal. Further, I instruct all parties to mute  
21      themselves when not speaking, and when they do speak to  
22      identify themselves by name each time.

23              I would ask the defendant to raise his right hand to  
24      be sworn, please. You may remain seated so we can see you on  
25      the camera. Thank you.

1 (BRIAN JORDAN BARTELS was duly sworn)

2 THE COURT: Sir, do you understand that having been  
3 sworn, your answers to my questions are subject to the  
4 penalties of perjury or for making a false declaration if you  
5 do not answer truthfully?

6 THE DEFENDANT: I do. Yes, I do.

7 THE COURT: Okay. I think --

8 MR. OTTE: My apologies, Your Honor.

9 (A discussion was held off the record)

10 THE DEFENDANT: Yes, I do.

11 THE COURT: The Court notes for the record that due  
12 to the COVID-19 crisis and the related miscellaneous orders  
13 entered by Chief Judge Hornak at 20-MC-00466 on March 30,  
14 2020, sentences have been required to occur by  
15 videoconference; however, whereas here the defendant does not  
16 wish to proceed by videoconference, the Court is permitted to  
17 conduct what would be characterized as a hybrid sentencing  
18 hearing, which is a combination of in-person and  
19 videoconference hearing.

20 On December 4, 2020, the Court ordered the defendant  
21 to promptly file a motion to proceed by videoconference, if  
22 applicable, or motion to proceed by hybrid as outlined in that  
23 order.

24 On December 8, 2020, defendant filed his notice  
25 setting forth that he wished to proceed by hybrid

1 videoconference sentencing and thus defendant and his counsel  
2 are appearing today in person while following CDC guidelines  
3 and all other parties are appearing by video except for the  
4 two witnesses or guests that we have in the courtroom.

5 The Court notes for the record that there's no  
6 difference substantially or procedurally than if the parties  
7 were present in the courtroom totally and appearing in person.

8 Again, to the defendant, do you understand, sir, that  
9 having been sworn, your answers to my questions are subject to  
10 the penalties of perjury or for making a false declaration if  
11 you do not answer truthfully?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Court notes for the record that on  
14 December 22, 2020, defendant entered a plea of guilty in this  
15 courtroom to Count 1 of a one-count indictment at criminal  
16 number 20-00116, charging the defendant with violation of  
17 Title 18 United States Code Sections 231(a)(3) and Section 2,  
18 obstruction of law enforcement during a civil disorder.  
19 Correct, sir?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Following your guilty plea, I directed  
22 the probation office to prepare a pre-sentence investigation  
23 report, which you have received, correct, counsel?

24 MR. OTTE: Yes, Your Honor.

25 THE COURT: Correct, sir?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I've reviewed the pre-sentence  
3 investigation report, addendum thereto and the sentencing  
4 recommendation of the probation office. I've also reviewed  
5 defendant's and government's objections to paragraph 17 of the  
6 pre-sentence investigation report, wherein the probation  
7 office determined that the United States Sentencing Guidelines  
8 Section 2J1.1 is applicable to defendant's conduct, and thus  
9 the base level is a 14.

10 In support of his objection to paragraph 17,  
11 defendant asserted that upon application of the United States  
12 Sentencing Guidelines Section 2X5.1 to his offense of  
13 conviction, Title 18 United States Code Section 231(a)(3):  
14 One, both the United States Guidelines Sections 2A2.4 and  
15 United States Guidelines Section 2B1.1 are sufficiently  
16 analogous to Section 231(a)(3). Two, Section 2J1.2 is not  
17 sufficiently analogous to section 231(a)(3). Third, that the  
18 most analogous section to 231(a)(3) is Section 2A2.4. And  
19 fourth, because both Section 2A2.4 and Section 2B1.1 are  
20 sufficiently analogous to Section 231(a)(3), the Court should  
21 apply one of those provisions in determining defendant's  
22 sentence.

23 Just so it's clear, the issue here is that there's  
24 not a guidelines section that perfectly matches the offense to  
25 which defendant has pled guilty. So we had to search for the

1 guidelines section, the sentencing guidelines section, that  
2 was the closest to the crime to which defendant pled guilty.

3 In support of its objection at paragraph 17, the  
4 government contends that utilizing the element-based approach  
5 as set forth by the United States Court of Appeals for the  
6 Third Circuit in the United States versus Jackson 862 F.3d 325  
7 decided in 2017: One, both Section 2A2.4 and 2J1.2 are  
8 sufficiently analogous to 231(a)(3); and second, the most  
9 analogous section to 231(a)(3) is section 2A2.4.

10 Court eventually entered tentative findings of fact  
11 sustaining both the government's objection and the defendant's  
12 objection to paragraph 17. Court now adopts its tentative  
13 findings as final and sustains the objections, as I previously  
14 mentioned.

15 I've reviewed the sentencing memoranda filed by the  
16 defendant and government and numerous letters attached to  
17 defendant's sentencing memorandum. I compliment both counsel  
18 in your diligence in not only working through the applicable  
19 guidelines section, but in your memorandums that you filed.  
20 It was a very professional job and I thank you for your  
21 efforts in that regard.

22 Pursuant to the standing order of the Board of  
23 Judges, the Court finds it's not appropriate to disclose the  
24 recommendation of the probation office to counsel nor the  
25 parties; however, sir, in determining your sentence, the Court

1 will not consider any matter that's not previously been  
2 disclosed to you or your attorney.

3 Defense counsel, have you reviewed the pre-sentence  
4 investigation report, addendum thereto and discussed them with  
5 your client?

6 MR. OTTE: Yes, Your Honor.

7 THE COURT: Are there any errors in the pre-sentence  
8 investigation report or addendum that you have not previously  
9 called to the Court's attention?

10 MR. OTTE: No, Your Honor.

11 THE COURT: Sir, have you reviewed the pre-sentence  
12 investigation report, addendum thereto and other matters and  
13 discussed them with your attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Counsel, is there any legal cause why  
16 sentence should not be pronounced?

17 MR. OTTE: No, Your Honor.

18 THE COURT: Anything else you would like to say or  
19 defendant would like to say, now is your time. And I think  
20 you've also filed a motion for a variance. So the time is  
21 yours.

22 MR. OTTE: Yes, Your Honor. I would like to call one  
23 witness, Mr. Bartels' father, George Bartels.

24 THE COURT: He has to speak into a device.

25 MR. OTTE: Your Honor, I'll let him speak into the



1 laptop and I can do it potentially at the stand right there.

2 THE COURT: No, he can do it at the corner of  
3 counsel's table, so you're a good 20 feet away from the rest  
4 of us. Thank you.

5 Sir, you can come forward. You do not need to be  
6 sworn. And since you're going to be by yourself, you may take  
7 your mask down for this brief period of time so the court  
8 reporter can accurately take down what you're saying.

9 MR. GEORGE BARTELS: Yes, sir.

10 THE COURT: You need to push the screen back a little  
11 bit on the top, please. Thank you, sir. Okay. Speak loudly,  
12 please.

13 MR. GEORGE BARTELS: Test. Can you hear me?

14 THE COURT: Yes, sir.

15 MR. GEORGE BARTELS: Thank you, Your Honor, as anyone  
16 can probably imagine, the last six, seven months have been  
17 incredibly difficult for our family. Brian brought that on  
18 himself; I understand that. This has given me and my wife  
19 Chandi, who is also in the courtroom, the opportunity to kind  
20 of recommit to Brian and what he needs in his life to be  
21 successful, to be a law-abiding citizen, to have a future and  
22 display his full potential.

23 I'm sure you probably read a lot of these things  
24 already in your sentencing reports and probation reports and  
25 those things, but I do want to just mention a little bit of

1 background about Brian, his character and who he truly is.  
2 Brian, you know he's had some mental health issues and  
3 developmental issues, obsessive compulsive disorder, ADHD, to  
4 name a few. Your Honor, my son is not perfect. I'm not up  
5 here to waste the Court's time to convince you he is. His  
6 actions in late May, whatever that day was, were flat out  
7 wrong. Myself, my wife, my family and especially Brian, we  
8 don't condone those actions. We understand what he did was  
9 wrong and we understand that he needs a chance to redeem  
10 himself. Brian does display many positive attributes though.  
11 A 30-second video does not encapsulate everything my son has  
12 and can bring to his neighborhood, communities. He's very  
13 giving, he's very generous, he's kind, he's loving. He helps  
14 others. He gives classes to young students. He educates  
15 others about animal rights. He has donated his time and  
16 resources to needy families. He is, at his heart, a genuinely  
17 kind person.

18 I understand what you're tasked with in trying to  
19 determine what is the best appropriate sentence for him. And  
20 I would like to just make a couple of points about Brian's  
21 support system and his future plans. Brian has a fantastic  
22 support system. And you know, frankly, if it weren't for the  
23 COVID restrictions, we would have packed this courtroom. My  
24 wife and I were allowed to be here and we're grateful for that  
25 opportunity. But we have grandparents on both sides, aunts

1 and uncles on both sides, his brother, my brother, his  
2 counselor, family, friends, others in our network of support  
3 that have been with us through these last six, seven months of  
4 hell.

5 Brian is on the right track. That rehabilitation has  
6 already begun. I can assure you and this Court that myself and  
7 my wife are more invested in Brian's future and him following  
8 the straight and narrow more than any PO or anyone affiliated  
9 with the corrections system.

10 One thing that I think it's important for you to  
11 know, Your Honor, my son attends counseling sessions with his  
12 therapist Kerrie Boydman. And Ms. Boydman has been  
13 instrumental in helping Brian kind of filter through his  
14 obsessive thoughts and what he sees are injustices and what  
15 are possible in productive outcomes and solutions as opposed  
16 to the counterproductive and stupid decision that he made.  
17 She's helping him grow, develop and work through things in his  
18 weekly counseling sessions, and I truly believe, hand on my  
19 heart to God as my witness, this is a huge step in the right  
20 direction for him.

21 My son Brian has also been at group recovery sessions  
22 and he's been on the receiving end of a lot of great things,  
23 ways to cope, ways to deal, to have peer counseling. But one  
24 thing that makes me proud as a father is that he has gone a  
25 step above and beyond that and now he's giving back to that

1 group. It's a recovery group similar to AA. He helps  
2 facilitate some of the sessions. He's been a peer advisor to  
3 others, he's been a resource to others, and actually helped  
4 others. And I think that's clicked a light bulb for Brian,  
5 that he can do positive things and he can help others.

6 I also want you to know, Judge, that Brian has plans  
7 for the future. This is not a path that he's going to  
8 continue to go down. There's no prior record of this. And in  
9 my humble opinion, there's no reason to believe this would  
10 ever happen again. He's been accepted to college. He's using  
11 that turning point with his recovery to understand that he has  
12 the potential to help people, he has the potential to be  
13 something more than what he's been seen in these last several  
14 months. He's already been accepted to a four-year university.  
15 He's going to double major in psychology and political  
16 science, to help him better understand the brain, people's  
17 reactions and emotions and things that have contributed to a  
18 lot of the frustration and discord and chaos that our entire  
19 country, not just my son, has seen in this last year. He  
20 wants to major in political science to better understand the  
21 system, this very, very confusing system. I'm 46 years old.  
22 I don't fully understand how we got here, what happened. He  
23 wants to educate himself and be able to help others in his  
24 future.

25 Judge Schwab, Your Honor, this is a plea for mercy

1 from a father. I love my son very much. I know what he did  
2 was wrong. He deserves a second chance. He spent a couple  
3 days in jail already, Allegheny County. God blessed his hands  
4 for music, playing guitar, writing songs, holding a  
5 microphone, for helping others, not to have to defend himself  
6 and fight in prison. I implore you to not incarcerate my son.  
7 That's not the best course of action.

8 The rehabilitation with my son has already begun. My  
9 wife and I have his support system in place. We're going to  
10 ensure that he continues to keep his grades, he continues to  
11 take his employment seriously and he continues to have an  
12 opportunity to redeem himself, to restore our family name and  
13 to show you and the whole world -- because this has gone  
14 worldwide -- most importantly, himself, what his full  
15 potential is. Please give him the opportunity to reach that  
16 potential.

17 Again, my wife and I will go above and beyond in  
18 ensuring we do everything that Brian becomes a positive,  
19 productive member of society and a law-abiding citizen. Thank  
20 you for your time and listening to my testimony.

21 THE COURT: Thank you for your statement and both you  
22 and your wife being physically present here. We obviously  
23 have a lot of defendants who appear before this Court and have  
24 no family support. So I thank you for being physically here  
25 and declaring publicly your support for him.

1 MR. GEORGE BARTELS: Thank you, Your Honor.

2 THE COURT: Excuse me for one minute.

3 (A discussion was held off the record)

4 THE COURT: You may continue, counsel.

5 MR. OTTE: Thank you, Your Honor.

6 THE COURT: And just so it's clear to me, there's no  
7 motion on behalf of neither the government nor the defendant  
8 for a variance upward or downward, correct?

9 MR. OTTE: Correct, Your Honor. The request for a  
10 variance was made just in case the government -- excuse me, in  
11 case the Court were to apply the guidelines that the  
12 government had previously suggested.

13 THE COURT: On behalf of the government, there's also  
14 no motion for variance upward or downward, correct?

15 MR. SWEENEY: That's correct, Your Honor.

16 THE COURT: Back to you, defense counsel. It's still  
17 your time.

18 MR. OTTE: I'll be brief. I do want to point out  
19 with regard to acceptance of responsibility, as Your Honor  
20 knows, in many cases, acceptance of responsibility comes right  
21 before trial. In this case, acceptance of responsibility came  
22 on the drive home. On his drive home, when he caught a ride  
23 after the protest -- I would like to actually go back even  
24 further. After he had caused the damage to the police car,  
25 after he had spray painted it and busted in the windows, he

1 saw the crowd getting out of hand, he realized he played a  
2 role in that and he got out of there as quickly as possible.  
3 He then caught a ride home. On the ride home, he called his  
4 parents and informed them he had made a stupid decision.  
5 Those were his words. That is an acceptance of responsibility  
6 that occurred almost immediately. And within 48 hours, he  
7 found himself at the Pittsburgh Police headquarters,  
8 explaining to the police what had happened. His acceptance of  
9 responsibility was immediate and it was fullsome. So I think  
10 we deal with the guidelines in terms of points. We don't  
11 oftentimes calculate the level of acceptance of responsibility  
12 in reality. His immediate and full acceptance of  
13 responsibility saved the government and saved Pittsburgh an  
14 extraordinary amount of resources, but it also reflects on who  
15 he is and what he's capable of as a young man. With that, I'd  
16 like to let him make his statement to the Court.

17 THE COURT: Okay. Sir -- counsel, you want to move  
18 six feet away. And sir, you can take down your mask so we can  
19 hear you clearly. And if you're going to read from a  
20 document, kindly read it slowly, please. Thank you.

21 THE DEFENDANT: Yes, Your Honor. I thank you for the  
22 opportunity to speak. I understand why I'm here and that  
23 people have been hurt because of me, people lost money because  
24 of me. People have been upset, angry, frustrated, scared,  
25 made people feel less safe. To know that an apology can't

1     erase that, can't take it back as much as I might like to, but  
2     for what it's worth, I am sorry. I made a stupid mistake and  
3     a lot of people have had to pay for it. I think back to May,  
4     leading up to what happened, I was hopeless, angry,  
5     frustrated, I had all these emotions and I went out and I made  
6     a problem worse. I wanted to help; instead, I hurt people.  
7     Quite frankly, it's embarrassing. It's sad how I handled that  
8     and how I alienated people from a cause I believed in and  
9     brought violence and fear to my community. I looked at what  
10    happened. I looked at that failed attempt and thought what  
11    can I do that's better, what can I do that will actually help.

12               So as a direct result of what happened last year, I  
13    did change my major from music, music education, to psychology  
14    and political science. I don't know exactly what I'm going to  
15    do with that degree yet. What I do know is that in June of  
16    2019, I went to a rehabilitation center, Gateway, not just to  
17    get clean, but to fix some deeper problems within myself, and  
18    I'm not perfect. I'm still learning. I'm still trying to do  
19    better every day. But the person I was before Gateway was  
20    hopeless, depressed, a black hole that was not recognizable  
21    from who I was before that. And when I went to Gateway and  
22    started working with a personal therapist and working on  
23    myself, I found healthier ways to cope with those problems.  
24    Those therapists helped me so much. And if I can have the  
25    opportunity to go to the school that I was accepted into in



1 the fall and train to be able to do that to someone else, to  
2 be able to be that person to somebody who needed it as much as  
3 I did, to me, that would be worthwhile. I want to be able to  
4 channel my energy towards something productive and helpful and  
5 effective. I can't hammer home how sorry I am. I can't think  
6 of a single person I shouldn't be apologizing to right now.  
7 I'm looking forward to a future where I can channel my drive  
8 and passion in a productive, mature, effective, healthy and  
9 legal way. Thank you, Your Honor.

10 THE COURT: Thank you for your statement. Anything  
11 else, counsel?

12 MR. OTTE: No, Your Honor.

13 MR. SWEENEY: Your Honor, may I -- this is Shaun  
14 Sweeney, may I make argument with respect to the 3553(a)  
15 factors at some point?

16 THE COURT: Sure. You just have to wait your turn,  
17 if you kindly would, please.

18 MR. SWEENEY: I'll do that, Your Honor.

19 THE COURT: Sir, are you satisfied with the  
20 representation of your attorney?

21 THE DEFENDANT: Yes, sir, I am, Your Honor.

22 THE COURT: Has he done everything you've asked him  
23 to do?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Is there anything he's done you think he

1       should not have done?

2               THE DEFENDANT:   No, Your Honor.

3               THE COURT:   On behalf of the government, what is your  
4       position today, please?

5               MR. SWEENEY:   Judge, I know that the Court is going  
6       to consider the factors under 18 USC Section 3553(a) and both  
7       Mr. Bartels, younger and his father, have spoken with respect  
8       to one of those factors, that being the history and  
9       characteristics of the defendant.   But I'd like to talk  
10      briefly about the nature and circumstances of the offense  
11      under 3553(a), which really is the factor that brings  
12      Mr. Bartels to the court today to be sentenced for a federal  
13      felony.   And I want to emphasize three points from the offense  
14      conduct relating to the nature and circumstances of the  
15      offense that I think are important here.

16              First of all, the defendant went to the protest  
17      obviously prepared to, at a minimum, damage or destroy some  
18      property.   He showed up with a backpack with spray paint in  
19      it.   He made that decision before he left his house.

20              Secondly, Your Honor, he didn't just choose random  
21      property, a wall or a building or a window to begin his  
22      destruction, he specifically targeted a police vehicle, a  
23      police SUV that was there with police officers whose job was  
24      to provide security and deterrence, to protect the protestors  
25      who were there to have their voices heard.   They were there to

1 protect and maintain peace and safety for everybody there.

2 But Mr. Bartels chose to attack the police vehicle.

3 And third, Your Honor, he chose to be the instigator  
4 for this chaos. He's the one that first went over to the  
5 police car, spray painted it, jumped up on the roof, smashed  
6 the windshield out. He is the one who really was the one who  
7 caused the problems here with the crowd in that area. So that  
8 a police officer approximately 50 yards away, who was assigned  
9 to that SUV that the crowd was destroying, chose to back  
10 off -- wisely chose to back off because the crowd had just  
11 descended upon that vehicle and was destroying it. He could  
12 no longer do his job. Fortunately, nobody was seriously  
13 injured up at that scene. But those three things, Your Honor:  
14 He came prepared, he chose a police vehicle and he caused some  
15 significant chaos. That's why Mr. Bartels is here being  
16 sentenced for a federal felony. And I would just like the  
17 Court to consider those three points in imposing sentence here  
18 today.

19 THE COURT: Counsel, I just want to confirm that the  
20 applicable sentencing guidelines section is 2A2.4, that the  
21 offense level is an 8. The criminal history category is a I.  
22 And that the resulting advisory guideline range is zero to six  
23 months imprisonment, one to three years of supervised release,  
24 probation of not less than one year, but no more than five  
25 years, a fine of \$2,000 to \$10,000, an agreed-to restitution

1 amount of \$1,000 and a special assessment of \$100.

2 Am I correct in my summary of the applicable  
3 guideline range and offense level, criminal history category  
4 and sentencing range? On behalf of the defendant?

5 MR. OTTE: Yes, Your Honor.

6 THE COURT: On behalf of the government, please?

7 MR. SWEENEY: Yes, Your Honor.

8 (A discussion was held off the record)

9 THE COURT: I think the fine amount is actually  
10 \$2,000 to \$20,000. Do you agree with that correction on  
11 behalf of the defendant?

12 MR. OTTE: That does sound correct, Your Honor.

13 THE COURT: On behalf of the government, please?

14 MR. SWEENEY: I think so, Your Honor, yes.

15 THE COURT: And the restitution amount as agreed to  
16 is \$1,000? On behalf of the defendant?

17 MR. OTTE: Yes, Your Honor.

18 THE COURT: And on behalf of the government?

19 MR. SWEENEY: We stipulated to that, yes, Your Honor.

20 THE COURT: Thank you for working together on that  
21 particular issue.

22 Sir, your sentence is as follows: Pursuant to the  
23 Sentencing Reform Act of 1984, it is the judgment of the Court  
24 that the defendant be sentenced to a term of imprisonment in  
25 addition to whatever time he's already served to one day in

1 the custody of the United States Marshal Service. Thereafter,  
2 he shall serve three years in supervised release and he shall  
3 reside for a period of 180 days, the first 180 days of his  
4 supervised release, in a residential reentry center, probably  
5 Renewal, to commence as soon as arrangements can be finalized  
6 by the probation officer, and he will be required to observe  
7 all the rules of that facility.

8 So as to the one year -- one day in the marshals  
9 custody, that term of imprisonment will be served today.  
10 Immediately following this proceeding, defendant shall be  
11 accompanied by his attorney and shall proceed to the office of  
12 the United States Marshal Service where he'll be taken into  
13 custody. They are prepared to receive him today. And as I  
14 said, the term of imprisonment will be followed as soon as  
15 possible for 180 days; in other words, six months, at a  
16 residential reentry center as soon as a bed is available,  
17 which I believe will be very promptly.

18 It is further ordered that defendant shall pay  
19 restitution in the amount of \$1,000. Payment is to be made to  
20 the Treasurer of the City of Pittsburgh and shall be mailed to  
21 the Office of Controller, City of Pittsburgh, City-County  
22 Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219.  
23 The defendant shall make restitution payments at the rate of  
24 not less than 10% of his gross monthly earnings or \$250,  
25 whichever is greater. The first payment shall be made within

1 30 days of this judgment.

2 The victim's recovery is limited to the amount of its  
3 loss and defendant's liability for restitution ceases if and  
4 when the victim receives full restitution. Defendant shall  
5 apply all moneys received from income tax refunds, lottery  
6 winnings, inheritances, judgments and anticipated or  
7 unexpected financial gains to this outstanding Court ordered  
8 financial obligation within ten days of receipt thereof unless  
9 excused from doing so by order of the Court. Court finds the  
10 defendant does not have ability to pay interest, therefore  
11 interest is waived.

12 While on supervised release, defendant shall not  
13 commit another federal, state or local crime, shall comply  
14 with the standard conditions that have been adopted by the  
15 this Court and shall comply with the following additional  
16 conditions:

17 One, defendant shall reside for a period of 180 days  
18 at a residential reentry center -- as I said before, probably  
19 Renewal -- to commence as soon as arrangements are finalized  
20 by the probation officer, and shall observe all rules of that  
21 facility.

22 Two, defendant shall not illegally possess a  
23 controlled substance. Supervised release must be revoked for  
24 possession of a controlled substance.

25 Three, defendant shall not possess a firearm,

1 ammunition, destructive device or other dangerous weapon.  
2 Supervised release must be revoked for possession of a  
3 firearm, ammunition, destructive device or other dangerous  
4 weapon.

5 Four, defendant shall participate in a program of  
6 testing and, if necessary, treatment for substance abuse, said  
7 program approved by the probation officer until such time as  
8 defendant is released from the program by the probation  
9 officer and/or the Court. Further, the defendant shall be  
10 required to contribute to the cost of services for any such  
11 treatment in an amount to be determined by the probation  
12 officer, but not to exceed actual costs. Defendant shall  
13 submit to one drug urinalysis within 15 days of being placed  
14 on supervision and at least two periodic tests thereafter.

15 Five, defendant shall not purchase, possess, and/or  
16 use any substance or device designed to alter in any way or  
17 substitute defendant's urine specimen for drug testing. In  
18 addition, the defendant shall not purchase, possess and/or use  
19 any device designed to be used for the submission of a third  
20 party's urine specimen.

21 Six, defendant shall submit his person, property,  
22 house, residence, vehicle, papers, business or place of  
23 employment to a search conducted by the United States  
24 probation officer at a reasonable time, in a reasonable  
25 manner, based on a reasonable suspicion of contraband or

1 evidence of a violation of a condition of supervision.

2 Failure to submit to a search may be grounds for revocation.

3 Defendant shall inform any other residents that the premises  
4 may be subject to searches pursuant to this condition.

5           Seven, defendant shall participate in a mental health  
6 assessment and/or treatment program approved by the probation  
7 officer until such time as the defendant is released from the  
8 program by the Court and/or the probation officer. Defendant  
9 is required to contribute to the cost of services for any such  
10 treatment in an amount to be determined by the probation  
11 officer. These costs shall not exceed the actual costs. The  
12 probation office is authorized to release defendant's  
13 pre-sentence investigation report to any treatment provider,  
14 if so requested.

15           Eight, defendant shall pay restitution, as I  
16 mentioned earlier, that is imposed by this judgment at a rate  
17 of not less than 10% of his gross monthly earnings or \$250,  
18 whichever is greater. The first payment shall be due within  
19 30 days of this judgment.

20           Nine, defendant shall report any change of address  
21 within 30 days to the United States Attorney's office while  
22 any portion of the restitution remains outstanding.

23           Ten, defendant is prohibited from incurring new  
24 credit card charges or opening additional lines of credit  
25 without prior written approval of the probation officer.



1           Eleven, defendant shall provide the probation officer  
2 with access to any requested financial information.

3           Twelve, defendant shall cooperate in the collection  
4 of DNA as directed by the probation officer.

5           Court also imposes a mandatory special assessment of  
6 \$100, constituting \$100 special assessment at each count to  
7 which defendant has pled guilty, which shall be paid to the  
8 Clerk of Court forthwith.

9           Based upon the financial information contained in the  
10 pre-sentence investigation report, the Court finds the  
11 defendant does not have the ability to pay a fine and  
12 therefore waives imposition of any fine.

13           Sir, the reason for your sentence is as follows: The  
14 sentence of imprisonment of one day in the custody of the  
15 United States Marshal Service, in addition to whatever time  
16 you've already served in incarceration, plus three years of  
17 supervised release, with the defendant residing in a  
18 residential reentry center for a period of 180 days, plus the  
19 restitution, is sufficient but not greater than necessary to  
20 comply with the goals of sentencing as set forth in Title 18  
21 United States Code Section 3553(a)(2), which are to reflect  
22 the seriousness of the offense, to promote respect for the law  
23 and provide for just punishment, to afford adequate deterrence  
24 to criminal conduct, to protect the public from further crimes  
25 by this defendant, and to provide the defendant with needed

1 education or vocational training, medical care or other  
2 correctional treatment in the most effective manner. The  
3 Court has considered all the sentencing factors as set forth  
4 in Title 18 United States Code Section 3553(a), including  
5 those presented by the government and defense and as set forth  
6 in the pre-sentence investigation report and addendum thereto.

7 Furthermore, I considered the following: First, the  
8 Court has considered the nature and circumstances of the  
9 offense. Defendant pled guilty to obstruction of law  
10 enforcement during a civil disorder in violation of Title 18  
11 United States Code Sections 231(A) (3) and 2 as a result of  
12 this criminal conduct on May 30, 2020.

13 Defendant was a part of a large crowd of protestors  
14 milling around the area of Centre Avenue above the PPG Paints  
15 Arena in Downtown Pittsburgh near an unoccupied Pittsburgh  
16 Police sports utility vehicle when he removed a can of red  
17 spray paint from his backpack and sprayed an A on the police  
18 vehicle. Defendant then jumped on the hood of the police  
19 vehicle, sprayed more paint on the vehicle and stomped on the  
20 windshield, breaking it. Several people in the crowd began  
21 cheering him and some people joined in, hitting and kicking  
22 the police vehicle. Defendant jumped off the hood and  
23 attempted to break the passenger's side of the vehicle. The  
24 police officer assigned to the SUV was approximately 50 feet  
25 away from the vehicle when the destruction occurred. After

1 the destruction began, he deemed it prudent to stand down and  
2 abandon the vehicle, rather than attempting to regain control  
3 of the vehicle or to make any arrests during the civil  
4 disobedience.

5 It's certainly true that thereafter, defendant did  
6 admit to the police that he initiated the attack on the  
7 vehicle, but defendant's conduct is serious criminal conduct  
8 and it was not a mistake, it was a crime. His conduct is  
9 further set forth in paragraphs 8 through 13 of the  
10 pre-sentence investigation report, which I incorporate by  
11 reference.

12 Obviously, the difficulty in a sentence like this is  
13 the defendant has no past criminal history, but he did engage  
14 in serious criminal conduct. Obviously, sentencing him within  
15 the guideline range of zero to six months imprisonment, even  
16 if it was a sentence of six months imprisonment, but with  
17 COVID-19 and the transportation issues and other logistics  
18 relating to a sentence of zero to six months, and in light of  
19 the need to have the defendant become a productive citizen as  
20 quickly as possible, I've chosen the supervised release  
21 provision with 180 days in the Renewal Center, which will keep  
22 him in Pittsburgh but also greatly limit his freedom, which is  
23 just punishment for his criminal conduct.

24 Second, the Court has considered defendant's  
25 criminal, family and social history and his personal

1 characteristics as further outlined in the pre-sentence  
2 investigation report at paragraphs 26 through 52, which the  
3 Court incorporates by reference as a basis for this sentence.  
4 The defendant is approximately 21 years old, has no criminal  
5 history, as I've mentioned, is a college student and planning  
6 further education as we heard from his father today. He  
7 suffers from numerous mental health issues, for which he's  
8 currently seeking and receiving professional treatment.  
9 Hopefully, there will be a way that that can continue even  
10 though he is physically confined to the Renewal Center.  
11 Defendant has a history also of substance abuse and he's  
12 receiving professional help in that regard. I do thank anyone  
13 who -- and the various people who wrote letters on his behalf.  
14 He's fortunate to have a strong family and friend network to  
15 support him.

16 Third, the Court has considered the kinds of  
17 sentences available for this offense and the sentencing  
18 guideline range under the advisory guidelines and applicable  
19 policy statements adopted by this Court -- adopted by the  
20 Sentencing Commission.

21 And fourth and finally, the Court has considered the  
22 need to avoid unwarranted sentencing disparities among  
23 defendants who have been found guilty -- with similar records  
24 who have been found guilty of similar conduct.

25 On behalf of the government, does my statement of

1 reasons adequately address all objections, concerns and issues  
2 raised?

3 MR. SWEENEY: Yes, Your Honor.

4 THE COURT: Are there any other sentencing factors  
5 under Section 3553(a) that the Court has failed to address?

6 MR. SWEENEY: No, Your Honor.

7 THE COURT: On behalf of the defendant, does my  
8 statement of reasons adequately all objections, concerns and  
9 issues raised?

10 MR. OTTE: Yes, Your Honor.

11 THE COURT: Are there any other sentencing factors  
12 under Section 3553(a) that the Court has failed to address?

13 MR. OTTE: No, Your Honor.

14 THE COURT: Have you talked to your client about his  
15 right to appeal?

16 MR. OTTE: Yes, Your Honor.

17 THE COURT: Sir, I'm going to review your right to  
18 appeal. Except as otherwise waived in the plea agreement, you  
19 have the right to appeal from the orders of this Court, the  
20 judgment of guilty and/or from the sentence imposed. You have  
21 a right to have an attorney represent you on appeal at no cost  
22 to you. If you cannot afford them, certified copies of the  
23 necessary records and transcripts will be furnished at the  
24 expense of the United States government. If you appeal, the  
25 notice of appeal must be filed within 14 days of today;

1 otherwise, you will lose your right to appeal. If you  
2 request, the Clerk of Court will immediately prepare and file  
3 a notice of appeal on your behalf.

4 Sir, do you wish to appeal from the orders of Court,  
5 judgment of guilty and/or from the sentence imposed?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Do you understand that if you change your  
8 mind and decide to appeal, any notice of appeal must be filed  
9 within 14 days of today, otherwise you will lose your right to  
10 appeal?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And if you request -- if you decide to  
13 appeal because you've changed your mind, you'll have your  
14 current counsel file any notice of appeal, correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: So it's clear, counsel, you're now  
17 obligated to take the defendant down to the United States  
18 Marshals; and then thereafter to coordinate with the probation  
19 officer the arrangements relating to defendant's confinement  
20 at Renewal.

21 So on behalf of the probation officer, since we have  
22 everybody on the phone at one time or on the video, do you  
23 want to explain some logistics that would help in the  
24 coordination with defense counsel and defendant, please.

25 PROBATION OFFICER: Absolutely, Your Honor.

1 THE COURT: State your name, please.

2 PROBATION OFFICER: Tracy DeMartino, supervising  
3 probation officer.

4 THE COURT: Welcome. Thank you for your work.

5 PROBATION OFFICER: Thank you. As long as Brian's  
6 contact phone number is accurate -- if he can verify that the  
7 phone number is accurate.

8 THE COURT: Well, why don't we -- why don't you just  
9 state the last four digits of the phone number.

10 PROBATION OFFICER: 9506.

11 THE DEFENDANT: That's correct.

12 PROBATION OFFICER: Okay. As soon as you're released  
13 from incarceration, an officer will be contacting you tomorrow  
14 in order to set up some information with regards to when you  
15 would be placed at Renewal and any information with respect to  
16 reporting prior to being placed at Renewal.

17 THE COURT: Understand?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And just so it's clear, the goal of this  
20 was to provide punishment for your wrongdoing, but to have it  
21 occur immediately or as soon as possible as opposed to having  
22 to wait for an uncertain period of time to serve your sentence  
23 at some federal institution. But the three years supervised  
24 release needs to be followed exactly and precisely and your  
25 counsel will explain to you the consequences of violating the

1 terms of your supervised release.

2 On behalf of the government, anything else, sir?

3 MR. SWEENEY: No, thank you, Your Honor.

4 THE COURT: Anything else on behalf of the defendant?

5 MR. OTTE: No, Your Honor.

6 THE COURT: I want to thank defendant's parents for  
7 being here and for supporting him. As I said earlier, most  
8 defendants appear, have no family and no support system, so  
9 I'm encouraged by your willingness to stand by your son and to  
10 speak on his behalf today. I wish everybody well. Stay safe.  
11 I adjourn this hearing.

12 C E R T I F I C A T E

13 I, MARSIA L. BALOBECK, certify that the foregoing  
14 is a correct transcript from the record of proceedings in the  
15 above-entitled case.

16 \s\ Marsia L. Balobeck  
17 MARSIA L. BALOBECK  
Official Court Reporter

06/02/2021  
Date of Certification